Testimony before the Executive and Legislative Nominations Committee
Testimony of John M. Gesmonde
March 22, 2016

Senate Duff, Representative Jankowski, Senator Kane, Representative Buck-Taylor and members of the Executive and Legislative Nominations Committee:

Thank you for inviting me today to speak to you concerning my proposed reappointment as an advocate arbitrator representing the interests of employee organizations. I believe my educational and professional backgrounds are already before you in the form of a resume, so I will not repeat that information in these comments.

I have been privileged to serve as an arbitrator pursuant to the Teacher Negotiations Act since appointed by former Governor O'Neill in 1983. Because of my longevity in that position, I may have served on more arbitration panels than any other current advocate arbitrator. This experience, as well as that of representing working people and some ninety (90) labor unions for over the past forty (40) years, allows me to be useful in helping to dispose of many arbitration cases during, or even before the start of, the actual arbitration hearing(s).

The latter is something that you will not read about in the state statutes, yet it is probably the most satisfying, albeit the least financially remunerative, aspect of serving as an arbitrator. Sometimes, I may be asked to meet with a teacher negotiation team before the first arbitration hearing to assess the position of the teachers' union on the disputed issues. This may lead to modified proposals from the association, further contacts with the attorney for the board of education by the union representative, and resolution of some or all of the issues prior to commencing the arbitration hearing itself. The same process may also occur during the actual arbitration hearing in

caucuses held by the parties and their advocate arbitrators. Because I believe the public policy of the State of Connecticut is to encourage voluntary settlements of labor disputes, I take this part of being an arbitrator extremely seriously. In those cases where the dispute may be settled in its entirety, or even partially, the resumption of amicable employer-employee relations is enhanced.

Probably, the most stressful part of being an advocate arbitrator for employee organizations is in trying to convince a union to modify its position in order to have any chance of prevailing on the subject issue(s) at hand. I have always said that the most difficult negotiations are not with your opponent, but with your own client. It is a sensitive and often unpopular role to assume when one has to tell the negotiation team that you represent after all their hard work that they are out of bounds or doomed to failure unless a significant revision is made to their last best offer. The central theme is always reasonableness in light of the statutory factors.

On the other hand, I often find that my responsibility is to advise the teacher negotiation team that it should not make any changes in their proposal or proposals. This, of course, is consistent with my function in representing the interests of the employee group, and in making sure that the ramifications of an overreaching proposal by a board of education is fully appreciated by a particular negotiation team.

After exhausting all efforts to resolve a dispute from prior to arbitration through the arbitration hearings themselves, there is then the responsibility to argue the employee organization's position in the executive session when the arbitration panel meets to decide the case. These sessions may be several hours to several days in duration, depending on the number and complexity of the issues. Unfortunately, because of the confidentiality of this aspect of the process, no one really knows how passionate and often heated advocate arbitrators may become in asserting their particular

views. Prior to the executive session, there is usually one (1) or more days of preparation that is involved in reviewing and analyzing all the exhibits that were submitted during the arbitration proceedings, including reading the post-arbitration briefs of the parties, taking notes on the evidence, and doing calculations related to the monetary issues to use in argument during the executive session. Finally, it is expected that the advocate arbitrator will dissent on all issues that were not rendered in favor of the entity he or she represents. Occasionally, that dissent necessitates a written opinion (see example attached), even though it does not change the result.

I very much appreciate your consideration of my nomination as put forth by the Connecticut Education Association and as recommended by the Governor. It has been an honor for me to serve for the past thirty-three (33) years as an arbitrator representing the interests of employee organizations, and I hope you will see fit to allow me to act in that capacity for another term.

John M. Gesmonde

In the Matter of Binding Arbitration

WATERBURY BOARD OF EDUCATION

-AND-

WATERBURY EDUCATION ASSOCIATION **APRIL 2, 2009**

DISSENTING OPINION OF JOHN M. GESMONDE, ESQ., ARBITRATOR APPOINTED BY THE WATERBURY EDUCATION ASSOCIATION

I dissent.

There are certain moral hazards one must accept when serving as a member of a quasi-judicial, interest arbitration panel created by law, including that of making a decision based on legal principles and not on compelling emotions, or one's own inherent sense of what should constitute a fair agreement, or on sympathies for one party's situation over another. We are simply bound to render our judgment on the basis of reliable, probative and substantial evidence on the whole record in light of certain specific statutory criteria. It is no easy task for the faint-hearted to settle a dispute based only on evidence sufficient to convince a reasonable mind, and to ignore unsupported statements of desire, conjecture, or, as in the present case, menace. While I believe the neutral member of this panel is uncomfortable succumbing to the tyranny of an extraneous demand from an entity not a party to these proceedings, I, on the other hand, am profoundly disturbed. Project Opening Doors ("POD") has been sincerely embraced by the Waterbury Education Association (WEA). The expectations created by POD for increased student enrollment and proficiency in math, science and English advanced placement courses have excited the school system, including its teachers. The WEA has expressed its bona fide commitment to the underlying wisdom of the program and in its participation at the bargaining table to ensure its successful implementation. The WEA has endorsed POD's stated goals, key components and an alternate compensation system. Only a single issue has emerged as a result of negotiations over the past number of months between the parties, due to the transparent refusal of the Waterbury Board of Education ("Board"), at the bidding of POD, to bargain over it; to wit, that sundry incentive payments, bonuses, awards, stipends, etc., to the extent they are to be bestowed upon teachers in the program for their successes and those of the students, which could be substantial, must be paid directly and exclusively to POD teachers. More to the point,

POD has threatened to terminate the program in its entirety if the WEA, by negotiated agreement with the Board or otherwise, seeks to "coerce" the teachers into having the money paid directly to some other source, such as a charity, the pupils themselves, or to the professional development fund of the Waterbury teachers at Wilby High School. The latter option constituted the last best offer of the WEA, which the majority of this panel has rejected, in my view, showing too great a willingness to oblige the peremptory exercise of authority by a non-party. The Board has reduced itself to a handmaiden in presenting its last best offer, which is not an offer at all, but a declaration, while the WEA is treated like the mudsills of society for asserting its right, indeed its obligation, to speak on behalf of all its members. As worthy and charitable an enterprise as POD may be, and perhaps because it does not understand the rules, that is how steadfast it has been in its imperious demand that only teachers involved in the POD program be paid directly the money earned as a result of their student's measured improvement. To put it in perspective, the President of POD would sooner have the seven (7) teachers spend their money on "buy(ing) some sort of a bobble (might that be bauble?) … . (because) Project Opening Doors is not concerned with what happens to the money once the teacher receives it(;)" than having the money be devoted to the professional development of Wilby teachers. The rationale for the WEA's position seems sensible in that it rewards not only the seven (7) teachers who are teaching the children currently in the advanced placement program, but also all the other teachers who may influence, or have influenced, the same or other students by helping them accomplish the pre-requisites in order to qualify for entry into the program in the first place, not to mention the other twelve (12) advance placement teachers who are not part of the particular subject matters covered by POD. Moreover, teachers in Waterbury have only recently recovered from the five years of state oversight during which previously hard earned levels of wages and

benefits, as well as language affecting other conditions of employment, were depredated. The seven (7) teachers in the program may receive anywhere from 5.5% to 7.7% above their base annual salary, while all other teachers at Wilby High School, including twelve (12) other advanced placement teachers not in the POD program as aforesaid, who may also have positively impacted the educational progress of students leading to their advanced placement experience, will share in no monetary recognition from this program. This stands in stark contrast to the fact that Waterbury Teachers received only a 2% general wage increase and no step movement for the 2008-2009 school year, and shall receive only step movement, and no salary increase at maximum for the 2009-2010 school year.

I could critically re-examine the statutory factors in light of the arguments of the parties, which obviously would favor the WEA's last best offer over the Board's, in effect, statement of abdication with which the majority of the panel, by means of its imminent approval, has now become associated. But, to what purpose; my belief is that the majority of the panel from the opening bell has exalted a "fact," which is not even a fact, to a statutory "factor" by accepting the wanton and causeless restraint imposed by POD. Indeed, the overtones of this decision reduce the exclusive bargaining representative of the Waterbury teachers to the semblance of a disgruntled meddler. It would be interesting to see if the State Board of Labor Relations would be similarly motivated deliberately to disregard the Board's refusal to bargain, and possibly its interference in the existence or administration of an exclusive employee bargaining organization, notwithstanding the Board's good intention in clothing POD with such sovereign power.